



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gregg A. Penner

Stefan A. Bledig

Timothy W. Conner

Vergel C. Concibido

Serial No.: 10/071,272

Confirmation No.: 9001

Filed: February 8, 2002

For: IDENTIFICATION OF SEEDS OR PLANTS
USING PHENOTYPIC MARKERS

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§ Group Art Unit: 1661

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§ Examiner: Wendy Haas

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§ Atty. Dkt. No.: 11898.0021.NPUS01

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NOTICE OF APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria VA, 22313-1450, on the date below:

Oct 10, 2006 *Laurie S. Linkhart*
Date Signature

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the primary examiner mailed April 11, 2006.

In the April 11, 2006 action the examiner rejected claims 1-13 and indicated that claims 14-18 were allowed. Applicants filed a response within the two month window of the final office action. In an Advisory Action dated August 10, 2006, the examiner refused to enter the amendments to claims 1 and 11-13. Thereafter in response to the Advisory Action, Applicants cancelled from the application all the rejected claims and maintained the allowed claims 14-18.

Applicants called the examiner on October 2, 2006 to check on the status of the Notice of

Allowance. The examiner stated she was prepared to issue a notice of allowance on October 4, 2006. By October 9, 2006 no notice of allowance was posted on PAIR. The undersigned called the examiner and Ms. Grunberg for the status. Ms. Grunberg returned the call and reported that the claims 14-18 were not allowable and a new rejection was forthcoming. In view of the timing that the case would technically lapse as of October 11, 2006, Ms Grunberg suggested that a notice of appeal be filed to extend the time for the PTO to take action in setting forth a new office action.

According this Notice of Appeal is filed to prevent the application from lapsing and to give the PTO time to vacate the final office action of April 11, 2006 and issue a new office action.

This paper is filed one month after the response deadline of September 10, 2006 of the preceding action in the application. A one month extension of time is requested in a separate paper. The Commissioner is authorized to deduct the Notice of Appeal fee of \$500 from Deposit Account No. 08-3038/11898.0021.NPUS01. Should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct such fees from the same Deposit Account.

Respectfully submitted,



Patricia A. Kammerer

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Date: October 10, 2006